

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

HILDA MORALES

Claimant

VS.

EXCEL CORPORATION

Respondent

Self-Insured

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Docket No. 220,221

ORDER

Claimant appealed the preliminary hearing Order dated November 3, 1998, and the Order Terminating Compensation dated November 9, 1998, both entered by Administrative Law Judge Pamela J. Fuller.

ISSUES

After conducting a hearing, the Judge ordered that temporary total disability compensation should be terminated as of August 20, 1998. Claimant appealed that order and contends (1) that the Judge erred and exceeded her jurisdiction by conducting the hearing in Seward instead of Ford County, and (2) that the Judge exceeded the Division's jurisdiction and authority by conducting a hearing without requiring the respondent to comply with the provisions of K.S.A. 1997 Supp. 44-534a, K.A.R. 51-3-5(a), K.S.A. 44-510c, and K.S.A. 1997 Supp. 44-551 regarding requests for a preliminary hearing and/or review and modification.

FINDINGS OF FACT

After reviewing the record compiled to date, the Appeals Board finds:

(1) After an initial preliminary hearing, by Order dated February 12, 1998, the Division ordered Excel to pay Ms. Morales temporary total disability benefits for an accident on May 15, 1996. In May 1998, Excel served and filed its notice of intent that it was requesting a preliminary hearing to discontinue the temporary total disability benefits.

(2) In her brief to the Appeals Board, Ms. Morales contends a hearing was held in July 1998 but no record was taken and no written order was issued. According to Ms. Morales,

the Judge found, pursuant to K.S.A. 44-510c, that Excel was required to file a request for review and modification and, therefore, the request to terminate temporary total disability benefits was not properly before the Division. Conversely, in its brief to the Board, Excel states that the Judge continued the hearing until Dr. Mills' report was available. Whichever is true, the Division's file does not contain either an order or a transcript from a July 1998 hearing.

(3) In July 1998, Excel notified Ms. Morales that another preliminary hearing was scheduled for October 22, 1998, in Ford County. At that time, Excel did not file an application for preliminary hearing, notice of intent, or serve Ms. Morales with copies of the medical records that it intended to introduce. At the October hearing, the Judge ruled:

"What I'm going to rule at this time is that it's not properly before the Court pursuant to that statute, and you can appeal that ruling, and then maybe the higher-ups will give us a clear definition of how we are supposed to deal with it."

(4) But by written Order dated November 3, 1998, the Judge reversed the above quoted ruling and entered the following order:

"That the Court found that Respondent's motion was not properly before the Court at this time.

"That upon returning to the office, the Court researched the matter and found that Respondent's motion was in fact properly before the Court."

(5) Without filing another application for preliminary hearing or another notice of intent, Excel scheduled a preliminary hearing for November 4, 1998, in Seward County. After that hearing, the Judge ordered Ms. Morales' temporary total disability benefits terminated.

CONCLUSIONS OF LAW

(1) In construing statutes, the legislative intent is determined from considering the entire Act.¹

(2) The Kansas Supreme Court has stated that an important objective of workers compensation law is avoiding cumbersome procedures and technicalities of pleading so that a correct decision may be reached by the shortest and quickest possible route.²

¹ McGranahan v. McGough, 249 Kan. 328, 820 P.2d 403 (1991).

² Pyeatt v. Roadway Express, Inc., 243 Kan. 200, 756 P.2d 438 (1988).

(3) Further, the Division is not bound by technical rules of procedure but should give the parties reasonable opportunity to be heard and to present evidence, insure an expeditious hearing, and act reasonably and without partiality.³

(4) Ms. Morales argues that Excel's request to terminate temporary total disability benefits violated the provisions of K.S.A. 1997 Supp. 44-534a as Excel allegedly failed to provide notice of intent to file an application for the October 22 hearing. The Appeals Board disagrees.

First, the Board has previously held, and continues to hold, that the Division retains jurisdiction over the parties and the issues presented at the initial preliminary hearing. Therefore, later hearings conducted to address those same preliminary hearing issues are treated as a continuation of the initial hearing. That interpretation of the Act affords the parties expeditious hearings and avoids cumbersome procedures that would only serve to delay prompt decisions.

Second, if an appellate court would find that a party must file an application for a preliminary hearing and a new notice of intent every time a hearing is needed to address an ongoing preliminary hearing issue that already has been addressed, the Appeals Board finds that Excel has complied with such a requirement with its May 1998 notice of intent.

(5) Ms. Morales argues that K.S.A. 44-510c(b)(1) required Excel to file a request for review and modification and, therefore, the Judge erred by terminating the temporary total disability benefits absent that request. Again, the Appeals Board disagrees.

K.S.A. 44-510c(b)(1) reads:

The payment of compensation for temporary total disability shall continue **for the duration of any such disability**, subject to review and modification as provided in K.S.A. 44-528 and amendments thereto. (Emphasis added.)

In examining the meaning of that language, it is important to consider what the legislature did not say. It does not say that temporary total disability benefits will continue until the preliminary hearing award is modified. And, it is not reasonable to believe that the legislature intended temporary total disability benefits to continue until the conclusion of a review and modification proceeding when it is clear a worker is no longer temporarily and totally disabled.

The literal meaning of the above quoted language is that temporary total disability benefits shall continue only while a worker is temporarily and totally disabled, unless the preliminary hearing award is modified. But when the worker is no longer temporarily and totally disabled, the benefits cease.

³ K.S.A. 1997 Supp. 44-523(a); Pyeatt, *supra*.

That interpretation may seem strained or simplistic until one considers that a party may seek termination of temporary total disability benefits although a worker technically satisfies the definition. For example, a party may seek termination of benefits when the worker refuses to submit to a medical examination,⁴ refuses to furnish medical information releases,⁵ or maybe even leaves the country.⁶ Also, further investigation may disclose a basis to terminate benefits as the parties may discover a defense that was not previously known. In those examples, temporary total disability benefits do not automatically terminate and the preliminary hearing award should be modified.

The Appeals Board rejects Ms. Morales' contention that K.S.A. 44-510c(b)(1) required Excel to initiate a review and modification proceeding. But if an appellate court should determine that a review and modification is required to terminate temporary total disability benefits in each and every case, the Board finds that the hearing that the Judge conducted on November 4, 1998, substantially complied with the Act's requirements. Further, the notice of intent that Excel filed in May 1998 requesting termination of the temporary total disability benefits substantially complied with any application requirements set forth in K.S.A. 44-528.

When considering the entire record, the Appeals Board finds that the Judge did not violate either K.S.A. 44-510c or K.S.A. 44-528. Therefore, the Judge acted within her jurisdiction and authority.

(6) The Workers Compensation Act specifically provides that preliminary hearings are to be summary in nature and may be held in any county designated by the Judge.⁷ The record does not suggest that the Judge scheduled the hearing in Seward County for questionable motives. Therefore, the Appeals Board finds that the Judge did not exceed her jurisdiction or authority in that regard.

(7) As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim or at a later preliminary hearing.⁸

WHEREFORE, the Appeals Board affirms the preliminary hearing Order dated November 3, 1998, and the Order Terminating Compensation dated November 9, 1998, both entered by Administrative Law Judge Pamela J. Fuller.

⁴ K.S.A. 44-518.

⁵ K.A.R. 51-9-10.

⁶ K.S.A. 44-528.

⁷ K.S.A. 1997 Supp. 44-534a(a)(2).

⁸ K.S.A. 1997 Supp. 44-534a(a)(2).

IT IS SO ORDERED.

Dated this ____ day of January 1999.

BOARD MEMBER

c: John D. Shultz, Dodge City
Shane D. Bangerter, Dodge City
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director